

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Accounts of Max Rosenberg

Claim Numbers: 203172/AY; 207271/AY; 211820/AY; 212222/AY

Award Amount: 53,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Max Rosenberg (the “Account Owner”) at the [REDACTED I] (“Bank I”) and at the Bern branch of the [REDACTED II] (“Bank II”) (together the “Banks”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants, who are siblings, each submitted two Claim Forms, identifying the Account Owner as their father. The Claimants stated that Max Rosenberg, who was born on 31 August 1894 in Germany, was married to [REDACTED], née [REDACTED], with whom he had two children, [REDACTED 1] (Claimant [REDACTED 1]), who was born on 2 June 1933 in Fulda, Germany, and [REDACTED 2] (Claimant [REDACTED 2]), who was born on 22 May 1935 in Fulda. The Claimants explained that their father, who was Jewish, was a physician and lived with his family in Fulda. The Claimants indicated that their family fled from Germany to Switzerland in February 1939, but were forced to leave Switzerland in April 1939; they then tried to enter Cuba, but after being refused entry, managed to enter Mexico before finally settling in the United States. According to the Claimants, Max Rosenberg died on 16 November 1953 in New York, and [REDACTED] died on 17 October 1977, also in New York.

In support of their claims, the Claimants submitted numerous documents, including their father’s death certificate, issued in New York on 8 January 1954, which indicates that he was born in Germany, that he was a medical doctor, and that he was married to [REDACTED]; a copy of their mother’s German passport, indicating Fulda as her city of residence and listing the Claimants as her children; and their own German passports.

The Claimants also submitted copies of two letters from Bank II addressed to [REDACTED] in Köniz, Switzerland, dated 26 November 1938 and 3 April 1939. In the letter dated 26 November 1938, Bank II informed [REDACTED] that 5,000.00 United States Dollars had been transferred to Bank II, which was specifically assigned to Dr. Max Rosenberg, from his account at the Royal Bank of Canada in New York. In the same letter, Bank II noted that 5,000.00 United States Dollars were equivalent to 21,950.00 Swiss Francs, and that 21,000.00 Swiss Francs was withdrawn from his account at Bank II and then transferred to a blocked account at Bank II owned by the Rosenberg family. In the letter dated 3 April 1939, Bank II informed [REDACTED] that the police of Obwalden confirmed the transfer and deposit of the funds to the following persons: Dr. Max Rosenberg, born in 1894; his wife, [REDACTED], née [REDACTED], born in 1904; his daughter, [REDACTED 1], born in 1923; his son, [REDACTED 2], born in 1935; his mother, [REDACTED], born in 1868; and his mother-in-law, [REDACTED], born in 1879. Furthermore, the police of Obwalden informed Bank II that the deposit would become forfeited, if the Rosenberg family would not leave Switzerland at the set date. In a telephone conversation with the CRT, Claimant [REDACTED 2] did not know who [REDACTED] was, but stated that the money in the blocked account belonged to his father and that his father was never able to retrieve the account before his death in 1953.

The Claimants each previously submitted an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Dr. Max Rosenberg from Fulda, Germany.

Information Available in the Banks' Records

Bank I

Bank I's records consist of two customer cards. According to these records, the Account Owner was Dr. Max Rosenberg, who resided in Fulda-Rhön, Germany. Bank I's records indicate that the Account Owner held two demand deposit accounts, which were closed on 27 July 1933 and 29 July 1933. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in Bank I's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Bank II

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report any account belonging to the Account Owner at Bank II to the CRT.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the four claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father's name and country of residence matches the published name and country of residence of the Account Owner. The Claimants stated that their father was a physician and resided in Fulda, which matches unpublished information about the city of residence and title of the Account Owner contained in the Bank's records. In support of their claims, the Claimants submitted numerous documents, including their father's, Dr. Max Rosenberg, death certificate which states that he was married to [REDACTED]; a copy of their mother's, [REDACTED], German passport, indicating Fulda as her city of residence and listing the Claimants as her children; and two letters from Bank II, one of which states that the Claimant's are the son and daughter of Dr. Max Rosenberg.

The CRT notes that the Claimants filed Initial Questionnaires with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Dr. Max Rosenberg from Fulda, Germany, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimants have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. The CRT further notes that the other claims to these accounts were disconfirmed because those claimants provided different cities and/or countries of residence than the city and country of residence of the Account Owner. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he fled with his family from Germany to Switzerland, and later to Cuba and Mexico, before finally settling in the United States.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that the Account Owner was their father by submitting specific biographical information and numerous documents, including their father's death certificate, which states he was married to [REDACTED]; a copy of [REDACTED]'s German passport, which indicates the Claimants as her children; and their own German passports. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Regarding the two demand deposit accounts at Bank I, which were closed on 27 July 1933 and 29 July 1933, given that in 1933, the Nazis embarked on a campaign to seize the domestic and foreign assets of its Jewish nationals through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until February 1939, and would not have been able to repatriate his accounts to Germany without their confiscation; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owners and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquires by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A) and Appendix C,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Regarding the account at Bank II, the CRT notes that the ICEP auditors did not report any account belonging to the Account Owner at Bank II. The CRT further notes that based on the documents submitted by the Claimants, it is plausible that the Account Owner received the proceeds of the account at Bank II.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

¹ Appendix C appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

In this case, the Account Owner held two demand deposit accounts. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. Consequently, the total 1945 average value of two demand deposit accounts was 4,280.00 Swiss Francs. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of 53,500.00 Swiss Francs.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 2] and Claimant [REDACTED 1], as the children of the Account Owner, are each entitled to one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
6 February 2004